

Department of Veterans Affairs

§ 21.3105

with satisfactory employment opportunities in light of his or her circumstances.

(Authority: 38 U.S.C. 3520, 3561(a))

(b) *Availability of counseling.* Counseling assistance is available for—

(1) Identifying and removing reasons for academic difficulties which may result in interruption or discontinuance of training; or

(2) In considering changes in career plans, and making sound decisions about the changes.

(Authority: 38 U.S.C. 3520, 3561(a))

(c) *Provision of counseling.* VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (b) of this section upon the request of the eligible person.

(Authority: 38 U.S.C. 3520, 3561(a))

§ 21.3102 Required counseling.

(a) *Child.* The VA counseling psychologist will provide counseling and assist in preparing the educational plan only if the eligible child or his or her parent or guardian requests assistance, except that counseling is required for an eligible child if—

(1) The eligible child may require specialized vocational training or special restorative training; or

(2) The eligible child has reached the compulsory school attendance age under State law, but has neither reached his or her 18th birthday, nor completed secondary schooling. See § 21.3040(a).

(b) *Spouse or surviving spouse.* Counseling is required for a spouse or surviving spouse only if he or she desires specialized vocational training.

(Authority: 38 U.S.C. 3520, 3536, 3541, 3561)

§ 21.3103 Failure to cooperate.

VA will not act further on an eligible person's application for assistance under 38 U.S.C. chapter 35 when counseling is required for him or her and the eligible person—

(a) Fails to report;

(b) Fails to cooperate in the counseling process; or

(c) Does not complete counseling to the extent required under § 21.3102.

(Authority: 38 U.S.C. 3536, 3541, 3561(a))

§ 21.3104 Special training.

(a) *Initial counseling.* A counseling psychologist or vocational rehabilitation counselor in the Vocational Rehabilitation and Employment Division will counsel an eligible person with a disability who is a child, spouse, or surviving spouse before referring the case to the Vocational Rehabilitation Panel (established under § 21.60) for consideration as to the child's, spouse's or surviving spouse's need for a course of specialized vocational training or special restorative training. After consulting with the panel, and considering the panel's report, the counseling psychologist or vocational rehabilitation counselor will determine if the child, spouse, or surviving spouse needs a course of specialized vocational training or special restorative training, and where need is found to exist will prescribe a course which is suitable to accomplish the goals of 38 U.S.C. chapter 35.

(Authority: 38 U.S.C. 3536, 3540-3543, 3561(a))

(b) *Counseling after special restorative training.* When an eligible person completes or discontinues a course of special restorative training without having selected an objective and a program of education, a counseling psychologist or vocational rehabilitation counselor in the Vocational Rehabilitation and Employment Division will provide additional counseling to assist him or her in selecting a program of education suitable to accomplish the purposes of 38 U.S.C. chapter 35.

(Authority: 38 U.S.C. 3561)

[61 FR 26109, May 24, 1996, as amended at 73 FR 2424, Jan. 15, 2008]

§ 21.3105 Travel expenses.

(a) *General.* VA shall determine and pay the necessary expense of travel to and from the place of counseling for an eligible person who is required to receive counseling as provided under 38 U.S.C. 111 (a), (d), (e), and (g).

(Authority: 38 U.S.C. 111 (a), (d), (e), and (g))

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(b) *Restriction.* VA will not pay the necessary cost of travel to and from the place of counseling when counseling is not required, but is provided as a result of a voluntary request by the eligible person.

(Authority: 38 U.S.C. 111)

PAYMENTS

§ 21.3130 Educational assistance.

(a) *Approval of a program of education.* VA will approve a program of education selected by an eligible person if:

(1) The program is described in § 21.3021 (h) and (i) or (j);

(2) The individual is not already qualified for the objective of the program of education;

(3) The proposed educational institution or training establishment is in compliance with all the requirements of 38 U.S.C. chapters 35 and 36; and

(4) It does not appear that the enrollment in or pursuit of such person's program of education would violate any provision of 38 U.S.C. chapters 35 and 36.

(Authority: 38 U.S.C. 3521)

(b) *Payments.* VA will pay educational assistance at the rate specified in § 21.3131 (subject to the reductions required by § 21.3132) while the eligible person is pursuing an approved program of education or training.

(Authority: 38 U.S.C. 3521, 3532)

(c) *No payment for excessive training.*

(1) VA will make no payment for:

(i) Training in an apprenticeship or other on-job training program in excess of the number of hours approved by the State approving agency or VA; or

(ii) Lessons completed in a correspondence course in excess of the number approved by the State approving agency.

(2) A school's standards of progress may permit a student to repeat a course or portion of a course in which he or she has done poorly. VA considers the repeated courses to be part of the program of education. VA will make no payment for courses or training if the courses or training are not part of the eligible person's program of education.

(Authority: 38 U.S.C. 3501(a)(5), 3521)

(d) *Courses precluded.* VA may not pay educational assistance:

(1) For pursuit of a course if approval of the enrollment in the course is precluded by § 21.4252;

(2) For training in a foreign country unless the training is in the Philippines or is approved pursuant to the provisions of § 21.4260;

(3) For pursuit of a course offered by open-circuit television, unless the eligible person's pursuit meets the requirements of § 21.4233(c); or

(4) For pursuit of a course offered by independent study, unless the course is accredited, meets the requirements of § 21.4253, and leads to a standard college degree.

(Authority: 38 U.S.C. 3523)

(e) *Commencing date.* In determining the commencing date of an award of educational assistance, VA will apply the provisions of § 21.4131.

(Authority: 38 U.S.C. 5113)

[61 FR 26109, May 24, 1996, as amended at 73 FR 2424, Jan. 15, 2008]

§ 21.3131 Rates—educational assistance allowance—38 U.S.C. chapter 35.

(a) *Rates.* Except as provided in § 21.3132, educational assistance allowance under 38 U.S.C. chapter 35 is payable at the following monthly rates—

(1) For training pursued after June 30, 2004, and before October 1, 2004:

Type of course	Monthly rate
Institutional:	
Full time	\$788.00
¾ time	592.00
½ time	394.00
Less than ½ but more than ¼ time ¹	394.00
¼ time or less ¹	197.00
Cooperative training (other than farm cooperative) (full time only).	788.00